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From:

Sent: [Tuesday, September 16, 2008 1:41 PM]

To:

Cc:

Subject: [RE: Mandatory Employee Contributions to a VEBA]

It is the ruling position of this office that mandatory salary reduction contributions by an employer that are used exclusively to pay for the accident and health coverage of employees or retirees are excludable from gross income as employer-provided coverage under section 106 of the Code. Under these plans, there is no employee election between compensation and benefits, no employee election as to whether to participate in the plan and no employee election as to the amount of the contributions. See e.g. LTR 200837002. This is not a cafeteria plan and the section 125 rules are not relevant to this set of facts. In addition, I see no basis for taxing these contributions to the employee and then treating the contributions as after-tax employee contributions. Let me know if I can be of additional assistance.